

Applicant: David Haase, *et al.*
U.S.S.N.: 10/673,664
Filing Date: September 29, 2003
EMC Docket No.: EMC-03-100

REMARKS

The Office Action mailed October 20, 2005 has been carefully considered.

Claims 1-21 are pending and stand rejected.

Claims 1, 3, 4, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 20 and 21 have been amended. Claims 2, 12 and 19 have been cancelled.

Claims 1-5, 8-12 and 15-19 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-5, 8-12 and 15-19 of co-pending USPA no. 10/69,726.

Applicant, through his attorney, thanks the Examiner for his observation regarding the claims in the two applications, but respectfully disagrees with the reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter, applicant respectfully requests that the provisional rejection of the claims under obviousness type double patenting be held in abeyance until such time as one of the referred-to patent applications issues and a comparison of the issued claims may be made.

Claims 4, 11 and 18 stand rejected under 35 USC 112, second paragraph as being indefinite.

Applicant respectfully disagrees in part with the statements made in the Office Action. With regard to the term "extents of the clone," applicant, through his attorney, submits that the specification on page 9 describes "an extent [as] a number of contiguous data block on an LU [logical unit] that is represented by a specific amount of data, e.g., a bit in a map, e.g., a bitmap." Furthermore, the term clone is referred to in claim 1 as "a second volume of data denominated as

the clone, ~~and~~ which has data content that is a copy of the data content of the source being stored on the data storage system.” Accordingly, one skilled in the art would understand that the term “extent of the clone” would describe “a number of contiguous data blocks” within the second volume of data that is a copy of the first volume of data. Therefore, it is respectfully submitted that the referred-to terms are not indefinite as the terms “extents” and “clone” are clearly described in the written description and the claims of the instant patent application.

With regard to the term “may be” applicant disagrees with the remarks made in the Office Action but has amended the recited claims to contain the term “are” in place of “may be.”

For at least these reasons applicant submits that the reason for the rejection has been overcome and respectfully requests that the rejection be withdrawn.

Claims 1-21 stand rejected under 35 USC 102(e) as being anticipated by Young (USP no. 6,898,681).

Applicant respectfully disagrees with the reason for rejecting the claims.

Young discloses a system for providing a copy of data at a point in time that includes a data storage device including a master store arranged to store blocks of data, at least one subsidiary store to store point in time copy data having blocks of data copied from said master store at a particular point in time and a bitmap store associated with each of the subsidiary stores to store data indicating when a data block of the master store differs from a corresponding data block stored in the associated subsidiary store. (see Abstract).

The instant Office Action states that “the master store or volume [of Young] represents the first volume [in the instant application] and shadow store or volume [of Young] represents the clone volume recited in the claims.” The instant Office Action further refers to col. 11, lines

55-62, of Young, for disclosing the claim element "restoring the source by copying data content from the clone to overwrite the data content of the source" and col. 1, lines 61-64 and col. 20, lines 4-7 for disclosing the claim element "preserving the data content of clone by not allowing it to be overwritten by host writes during the restoring step."

A reading of the referred to sections of Young reveals that Young teaches that a master store can be restored "to a particular point in time by overwriting the data in the master store with the data from the appropriate shadow store." However, with reference to preserving the data content of the clone during the restore step, Young is silent with regard to this claim element.

Rather than teaching preserving the data content of the clone during the restore of the master Young teaches that a "user may select whether or not the first point in time copy is overwritten with the second point in time copy." (col. 20, lines 4-7). Hence, Young teaches, in the referred to sections, that a user may select or not select to overwrite prior copies of the point in time copy data during the copying process, which is independent of a restoring processing as is recited in the claims. Young is totally silent with regard to preserving the clone during a restoration step.

It is well recognized that to constitute a rejection pursuant to 35 USC §102, i.e., anticipation, all material elements recited in a claim must be found in one unit of prior art.

Young cannot be said to anticipate the present invention, because Young fails to disclose each and every element recited.

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At least for this reason, applicant submits that the rejection of claim 1 has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected for the same reason used in rejecting claim 1. Thus, for the remarks made in response to the rejection of claim 1, which are also applicable in response to the rejection of the remaining independent claims, and reasserted, as if in full, herein, it is submitted that the reason for rejecting these claims has been overcome and the rejection can no longer be sustained. It is respectfully requested that the rejection be withdrawn and the claims allowed.

With regard the remaining claims, these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

Accordingly, it is respectfully requested that the rejection be withdrawn and the claims allowed.

In view of the foregoing, the applicants' believe that the application is in condition for allowance and respectfully request favorable reconsideration.

Furthermore, it is submitted that the substance of the originally filed claims has not been amended. The amendments made to the claims were not made to overcome any prior art cited by but rather made to correct the form of the claims and more clearly state the invention.

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Accordingly, the amendments made are not related to patentability and do not alter or limit the substance of the subject matter claimed.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at 914 798 8505.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: 2/21/2006



Carl A. Giordano, Esq. (Reg. No. 41,780)
Attorney for Applicants
EMC Corporation
Office of General Counsel
44 S. Broadway, 7th flr.
White Plains, NY 10989
(914) 798 8505

Please direct all communications to:
EMC Corporation
Office of General Counsel
176 South Street
Hopkinton, MA 01748